SINGAPORE REPORTS

ATTORNEY-GENERAL v.

COLD STORAGE (SINGAPORE) PTE. LTD.

[C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) November 6, 1978]

[Singapore — Civil Appeal No. 6 of 1978]

Legislation — Subsidiary legislation — Power of Minister to make Order with retrospective effect — Validity of Port of Singapore Authority (Property Tax) Order 1977 — Port of Singapore Authority Act (Cap. 173), s. 28(2) — Interpretation Act (Cap. 3), ss. 2 & 23.

The facts of this case are briefly as follows. On March 19, 1977, the Minister for Communications made the Port of Singapore Authority (Property Tax) Order 1977 (hereinafter called the Order), which was published in the Gazette. This was done in exercise of his powers under section 28(2) of the Port of Singapore Authority Act. The Order was deemed to come into operation on October 28, 1976.

On November 29, 1977 the respondents took out an Originating Summons seeking a declaration that the said Order was *ultra vires* the said Act and was null and void and of no effect. The respondents argued before D'Cotta J. that the Order was not subsidiary legislation and that the terms of section 28(2) did not enable an order to be made with retrospective effect. The learned Judge held that the Order was null and void and of no effect.

The appellant appealed against that judgment.

Held, allowing the appeal: the Order in question was subsidiary legislation which the Minister could make with retrospective effect under section 23(1) of the Interpretation Act.

CIVIL APPEAL.

Chao Hick Tin (Deputy Public Prosecutor) for the appellant.

Sachi Saurajen for the respondent.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the Court): This is an appeal from a judgment of the High Court. It raises a question of some importance as to the powers of the Minister for Communications under section 28(2) of the Port of Singapore Authority Act (Cap. 173) (the Act).

Section 28(1) of the Act exempts premises vested in the Port of Singapore Authority from the operation of the Municipal Ordinance and the Local Government Ordinance, 1957, and the by-laws made thereunder or any written law repealing and re-enacting the provisions thereof.

Section 28(2) of the Act makes provisions for the application of these Ordinances to the premises of the Port of Singapore Authority. This subsection reads:

"The Minister may, after consultation with the Authority, by order published in the *Gazette* declare that any other provisions of the said Ordinances and by-laws or of any written law repealing or re-enacting the provisions thereof, shall apply to the premises of the Authority, and thereupon the same shall apply accordingly."

On the 19th day of March, 1977, the Minister of Communications made the Port of Singapore Authority (Property Tax) Order, 1977, (hereinafter referred to as "the Order"), which was published in the *Gazette*. The Order reads as follows:

"In exercise of the powers conferred by subsection (2) of section 28 of the Port of Singapore Authority Act, the Minister for Communications, after consultation with the Port of Singapore Authority, hereby makes the following Order:—

1. This Order may be cited as the Port of Singapore Authority (Property Tax) Order, 1977, and shall be deemed to come into operation on the 28th day of October, 1976.

2. The Property Tax Act shall apply to all premises of or vested in the Port of Singapore Authority."

It is to be noted that the Order "shall be deemed to come into operation on the 28th day of October, 1976."

On November 29, 1977, the respondents took out an originating summons seeking "A declaration that the Port of Singapore Authority (Property Tax) Order, 1977, made by the Minister for Communications on the 19th day of March, 1977, purportedly under the Port of Singapore Authority Act is *ultra vires* the said Act and is null and void and of no effect."

The originating summons was argued before D'Cotta J. The contention of counsel for the respondents before D'Cotta J. was that the Order was not subsidiary legislation and that the terms of section 28(2) did not enable an order to be made with retrospective effect. The learned judge held that the Order was null and void and of no effect.

The Attorney-General now appeals against that judgment.

It appears to us that the appellant's contention that section 28(2) gives the Minister power to make orders having retrospective effect is well-founded.

There can be no doubt that the Order is subsidiary legislation. Section 2 of the Interpretation Act (Cap. 3) defines "subsidiary legislation" as meaning "any order in council, proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act, Ordinance or other lawful authority and having legislative effect." The Order subjects the premises of the Port of Singapore Authority to the Property Tax Act from which they were exempted; it has the force of law.

Section 23(1) of the Interpretation Act provides that subsidiary legislation made under any Act or other lawful authority, unless it be otherwise provided in such subsidiary legislation, shall take effect and come into operation on the date of its publication in the *Gazette*. Subsection (2) of section 23 provides that any such subsidiary legislation may be made to operate retrospectively to any date not being a date earlier than the commencement of the Act or the establishment of the authority by or under which such subsidiary legislation is made.

It is urged by counsel for the respondents that section 28(2) of the Act clearly indicates that Parliament does not empower the Minister to make an order with retrospective effect. He argues that the word "thereupon" connotes the happening of an event and

that the word "thereupon" here means "upon the publishing of the order in the *Gazette*." We are unable to accept this view. The word "thereupon" here means "on the making of the order" and "the same shall apply accordingly" means "the same shall apply according to the order made."

For these reasons the appeal must be allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Drew & Napier.*

ATTORNEY-GENERAL v. CHIN AH LOY

[C.A. (Wee Chong Jin C.J., Kulasekaram and D'Cotta JJ.) November 24, 1978]
[Singapore — Civil Appeal No. 25 of 1978]

Landlord and Tenant — Tenancy period for a 3 year-term with option to renew for a further 3 year period — Tenancy determinable by 3 months' notice in writing — Option to renew exercised by tenant and granted by government with effect from February 1, 1975 — Government giving 3 months' notice on January 31, 1975 to terminate tenancy — Validity of notice to quit in dispute.

On October 28, 1971 the Government of Singapore invited tenders for three shops at the Singapore Airport. The respondent's tender in respect of one of the shops was accepted on January 11, 1972 by a letter from the then Director of Civil Aviation. The letter provided for a 3 year-tenancy commencing on January 1, 1972 with an option for extension of 3 years subject to the Director of Civil Aviation being satisfied with the quality of the services provided and the prices charged. The respondent accepted these terms and conditions and entered into possession. The tenancy, however, commenced on February 1, 1972. On May 3, 1972 the respondent received the tenancy agreement for execution. Clause 4(i) of the agreement provided for a term of 3 years from February 1, 1972 determinable at anytime by either party giving to the other 3 months' previous notice in writing. Subsequent correspondence ensued between the parties with the respondent expressing concern in regard to the said clause 4(i) and asked for a "secured term of 3 years". On June 27, 1972 in reply to this, the Director of Civil Aviation wrote, "... you may be reassured that if you observe carefully the rules and regulations of the Tenancy Agreement, your tenancy may be considered as secure for the period in question. The option for the extension of your tenancy as contained in my letter... dated 11.1.72 is not repeated in the Agreement as this letter may be taken as a part of your Tenancy Agreement with us."

By a letter dated October 30, 1974 the respondent indicated his wish to exercise the option to extend the tenancy for a further term of three years. On January 31, 1975 the Ag. Permanent Secretary, Ministry of Communications granted the "extension of the Tenancy Agreement with effect from February 1, 1975 on the same terms and conditions of the said Tenancy Agreement." In the same letter he gave the respondent 3 months' notice under clause 4(i) of the Tenancy Agreement to terminate the tenancy and stated that the notice would expire on April 30, 1975. As from May 1, 1975 the respondent was denied access to the shop and eventually dispossessed. He claimed damages for breach of the tenancy agreement and for wrongful dispossession. The High Court awarded him damages and the defendant in the action appealed.

Held, allowing the appeal: (1) the assurance given by the Director of Civil Aviation in the letter dated June 27, 1972 was not a term of the tenancy agreement which displaced the provisions of clause 4(i) but was a collateral warranty which was no longer binding on the government after the expiry of the initial three-year term of the tenancy;

(2) the notice to quit given on January 31, 1972 a few hours before the commencement of the extended term of the tenancy was a valid notice given in compliance with clause 4(i) of the tenancy agreement. Even if there was a new tenancy, the said notice was a valid notice.

Cases referred to:-

(1) *Lower* v. *Sorrell* [1963] 1 Q.B. 959.

(2) *Sidebotham* v. *Holland* [1895] 1 Q.B. 378.

COURT OF APPEAL.

Chao Hick Tin (Deputy Senior State Counsel) for the appellant.

K.S. Chung (*Tommy Neo* with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): On October 28, 1971 the Government of Singapore invited tenders for three shops at the Singapore Airport, one of which is described in the tender invitation as "Airport Shop, No. 22 — 1st Floor Arrival Hall (see Sketch B)". Paragraph 4 of the tender invitation states: —

"4. The above shops will operate for an initial period of 3 years with the option of a further extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the service provided and prices charged."

The tender of Chin Ah Loy (hereinafter referred to as "the respondent") in respect of Airport Shop No. 22, was accepted on January 11, 1972 by a letter from the then Director of Civil Aviation. In that letter it is stated: —

"3. Your tenancy will commence on the January 1, 1972 for a period of 3 years with an option for extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the services provided and prices charged....

6. Would you please let me have your written confirmation by the January 20, 1972 that you accept appointment as the operator and that you will operate the duty free shop for 3 years effective from February 1, 1972."

By a letter dated January 19, 1972 the respondent confirmed his acceptance of the offer according to the terms and conditions set out in the Director of Civil Aviation's letter of January 11, 1972 subject to two exceptions, one of which was that the tenancy should commence on February 18, 1972. This request was rejected and it would appear that the respondent entered into possession of the shop and that the tenancy commenced on February 1, 1972.

On May 3, 1972 the Director of Civil Aviation wrote to the respondent forwarding the tenancy agreement for signature and return. The tenancy agreement (which was subsequently executed and dated August 2, 1972) demised the shop to the respondent "for the term of 3 years from the 1st day of February 1972 determinable as hereinafter provided". Clause 4 of the tenancy agreement reads as follows: —

"4. Provided always and it is hereby agreed as follows:—

(i) Notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other three (3) months previous notice in writing."

On June 24, 1972 the respondent replied as follows: —

"The Director of Civil Aviation,
Singapore Airport,
Singapore, 19.

Attn: *Mr. Goh Hong Wan*

Dear Sir,

Re: *Tenancy Agreement*

Reference your letter dated 3.5.1972 enclosing the tenancy agreement for signature, we have to invite your attention to the following observations: